

Article I. Title and Definitions

**Section 1.1** Title SMALL CELL WIRELESS DEPLOYMENT REQUIREMENTS

**Section 1.2** Purpose. The purpose of this Chapter is to regulate the placement of wireless Communication Facilities in the Town. The standards set forth herein are created to provide objective, technically feasible criteria applied in a non-discriminatory manner that reasonably match the aesthetics and character of the immediate area regarding all the following, which the Town shall consider in reviewing an Application:

- a. The location of the ground-mounted Communication Facilities;
- b. The location of a Wireless Facility on a Pole or other devise;
- c. The appearance and concealment of Communication Facilities, including those relating to materials used for arranging, screening and landscaping;
- d. The design and appearance of a wireless Support Structure including any height requirements adopted in accordance with this Chapter.

This Chapter applies to Public ROW but does not restrict the Town's right to regulate Communication Facilities on non-Town owned property or outside of the Public ROW under the same terms and conditions set forth herein.

**Section 1.3** Definitions.

a. "Administrative Review" means ministerial review of an Application by the Town relating to the review and issuance of a Permit, including review by the Director of Codes Enforcement to determine whether the issuance of a Permit is in conformity with the applicable provisions of this Chapter.

b. "Antenna" means communications equipment that transmits and/or receives electromagnetic radio frequency signals used in the provision of Wireless Services. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes for residential or household purposes.

c. "Applicable Codes" means uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted, or incorporated, by the Town.

d. "Applicant" means any Person who submits an Application under this Chapter.

e. "Application" means a written request, on a form provided by the Town, for a Permit.

f. "Authority" or "Town" means the Town of Lysander or any agency, subdivision or any instrumentality thereof.

g. "Collocate" means to install or mount a Small Wireless Facility in the Public ROW on an existing Support Structure, an existing Tower, or on an existing Pole to which a Small Wireless Facility is attached at the time of the Application. "Collocation" has a corresponding meaning.

h. "Communications Facility" means, collectively, the equipment at a fixed location or locations within the Public ROW or on private property that enables Communications Services, including: (i) radio transceivers, Antennas, coaxial, fiber-optic or other cabling, power supply (including backup battery), and comparable equipment, regardless of technological configuration; and (ii) all other equipment associated with any of the foregoing. A Communications Facility does not include the Pole, Tower or Support Structure to which the equipment is attached.

i. "Communications Service" means cable service, as defined in 47 U.S.C. § 522(6); information service or broadband, as defined in 47 U.S.C. § 153(24); or telecommunications service, as defined in 47 U.S.C. § 153(53).

j. "Communications Service Provider" means a provider of Communications Services and includes a cable operator, as defined in 47 U.S.C. § 522(5).

k. "Decorative Pole" means a Pole that is specially designed and placed for aesthetic purposes.

l. "Discretionary Review" means review of an Application by the Town Planning Board relating to the review and issuance of a Permit that is other than an Administrative Review.

m. "Eligible Facilities Request" means an eligible facility request as set forth in 47 C.F.R. Section 1.40001(b)(3), as that section may be amended from time to time.

n. "FCC" means the Federal Communications Commission of the United States.

o. "Laws" means, collectively, any and all Federal, State, or local law, statute, common law, code, rule, regulation, order, or ordinance.

p. "Ordinary Maintenance and Repair" means inspections, testing and/or repair of existing Communication Facilities that maintain functional capacity, aesthetic and structural integrity of a Communications Facility and/or the associated Support Structure, Pole or Tower, that does not require blocking, damaging or disturbing any portion of the Public ROW.

q. "Permit" means a written authorization (in electronic or hard copy format) to install, at a specified location(s) in the Public ROW or at a specific location on private property, a Communications Facility, Tower or a Pole to support a Communications Facility.

r. "Permittee" means an Applicant that has received a Permit under this Chapter.

s. "Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including a governmental entity.

t. "Pole" means a legally constructed pole, such as a utility, lighting, traffic, or similar pole made of wood, concrete, metal or other material, located or to be located within the Public Right of Way. A Pole does not include a Tower or Support Structure.

u. "Provider" means a Communications Service Provider or a Wireless Services Provider, and includes any Person that owns and/or operates within the Public ROW any Communications Facilities, Wireless Facilities, Poles built for the sole or primary purpose of supporting Communications Facilities, or Towers.

v. "Public Right of Way" or "Public ROW" means the area on, below, or above property that has been designated for use as or is used for a public roadway, highway, street, sidewalk, alley or similar purpose, and for purposes of this Chapter shall include Public Utility Easements, but only to the extent the Town has to permit use of the area or Public Utility Easement for Communications Facilities or Poles, Towers and Support Structures that support Communications Facilities. The term does not include a federal interstate highway or other areas that are not within the legal jurisdiction, ownership or control of the Town.

w. "Public Utility Easement" means, unless otherwise specified or restricted by the terms of the easement, the area on, below, or above a property in which the property owner has dedicated an easement for use by utilities. Public Utility Easement does not include an easement dedicated solely for Town's use, or where the proposed use by the Provider is inconsistent with the terms of any easement granted to the Town.

x. "Replace" or "Replacement" means, in connection with an existing Pole, Support Structure or Tower, to replace (or the replacement of) same with a new structure, substantially similar in design, size and scale to the existing structure and in conformance with this Chapter and any other applicable Town [charter/code regulations], in order to address limitations of the existing structure to structurally support Collocation of a Communications Facility.

y. "Small Wireless Facility" means a Wireless Facility that meets both of the following qualifications:

(i) each Antenna could fit within an enclosure of no more than six (6) cubic feet in volume; and

(ii) all other wireless equipment associated with the Antenna, including the Provider's preexisting equipment, is cumulatively no more than twenty-eight (28) cubic feet in volume

z. "State" means the State of New York.

aa. "Support Structure" means a structure in the Public ROW other than a Pole or a Tower to which a Wireless Facility is attached at the time of the Application.

bb. "Tower" means any structure in the Public ROW built for the sole or primary purpose of supporting a Wireless Facility. A Tower does not include a Pole or a Support Structure.

cc. "Wireless Facility" means the equipment at a fixed location or locations in the Public ROW that enables Wireless Services. The term does not include: (i) the Support Structure, Tower or Pole on, under, or within which the equipment is located or Collocated; or (ii) coaxial, fiber-optic or other cabling that is between Communications Facilities or Poles or that is otherwise not immediately adjacent to or directly associated with a particular Antenna. A Small Wireless Facility is one type of a Wireless Facility.

dd. "Wireless Services" means any wireless services using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided to the public.

ee. "Wireless Services Provider" means a Person who provides Wireless Services. Article II. Governance of Deployment in the Public ROW

Comment [TF1]: Need to check these definitions

ARTICLE II – GOVERNANCE OF DEPLOYMENT IN ROW

**Section 2.1 Access to Public ROW:**

a. Agreement. Prior to installing any Communications Facility in a Public ROW, or any Pole built for the sole or primary purpose of supporting a Communications Facility, or any Tower, a Person shall enter into a Right of Way Agreement (“ROW Agreement”) with the Town expressly authorizing use of the Public Right of Way for the Communications Facility, Pole or Tower proposed to be installed.

(i) General Terms. The Right of Way Agreement shall include:

(A) the term of the ROW Agreement shall be annual, which shall renew automatically unless terminated by the Town upon ninety (90) days’ written notice.

(B) The ROW Agreement authorizes the Provider’s non-exclusive use of the Public ROW for the sole purpose of installing, maintaining and operating Communications Facilities, including any Pole built for the sole or primary purpose of supporting the Communications Facilities and any Tower, to provide the services expressly authorized in the ROW Agreement, subject to applicable Laws, this Chapter and the terms and conditions of the ROW Agreement. The ROW Agreement authorizes use only of the Public ROW in which the Town has an actual interest. It is not a warranty of title or interest in any Public ROW and it does not confer on the Provider any interest in any particular location within the Public ROW. No other right is granted except as expressly set forth in the ROW Agreement. Nothing herein shall authorize the use of the Town’s Poles, Towers, Support Structures, or other structures in the Public ROW. All use of Town Poles, Towers, Support Structures, and other structures in the Public ROW shall require a separate agreement (Attachment Agreement), and the payment of separate fees for such use.

(C) The Provider shall, at its sole cost and expense, keep and maintain its Communications Facilities, Poles, Support Structures and Towers in the Public ROW in a safe condition, and in good order and repair.

(D) The Provider shall keep and maintain liability insurance in the amount of \$1,000,000 for each incident and an umbrella policy in the amount of \$5,000,000 for each Communication Facility in a Public ROW. The Town shall be named an additional insured on each policy.

(E) The ROW Agreement shall include the name and contact information for the Provider to be called in cases of emergencies.

(F) Licensees using space in ducts, conduits and on Poles must comply with the terms of this ROW Agreement, unless expressly exempted by the Town.

(G) The Town shall have the right to access books and records, including audit rights, of the Provider to determine that all applicable fees and payments have been made to the Town.

(H) The Provider shall provide proof to the Town that it has a license or authority from the owner to use an existing Pole, Tower or Support Structure in the ROW a Communications Facility.

(I) The terms and conditions set forth herein are not exclusive and the Town reserves the right to require additional terms and conditions to the ROW Agreement.

(ii) Public ROW Construction and Installation Requirements:

(A) ROW Permit.

1. Unless expressly authorized in this Chapter or in writing by the Town, no Person may construct, maintain or perform any other work in the Public ROW related to Communications Facilities, Poles built for the sole or primary purpose of supporting Communications Facilities, or Towers without first receiving a Permit to the extent required under this Chapter, and any other permit or authorization required by applicable Laws.

2. The Town shall not issue a Permit unless the Applicant, or a Provider on whose behalf the Applicant is constructing Communications Facilities, Poles or Towers, has executed a ROW Agreement required by this Chapter, or otherwise has a current and valid franchise with the Town expressly authorizing use of the Public ROW for the Communications Facilities, Poles or Towers proposed in the Application, and all applicable fees have been paid.

(B) Location of New Facilities.

1. The Provider shall not locate or maintain its Communications Facilities, Poles and Towers so as to unreasonably interfere with the use of the Public ROW by the Town, by the general public or by other persons authorized to use or be present in or upon the Public ROW.

2. Aboveground placement of new poles and equipment cabinets shall meet the requirement set forth in Section 2.3(d) of this Chapter;

3. Unless otherwise agreed to in writing by the Town or otherwise required by applicable Laws, whenever any existing electric utilities or Communications Facilities are located underground within a Public ROW, the Provider with permission to occupy the same portion of the Public ROW shall locate its Communications Facilities underground at its own expense. The Town may, in its sole discretion, approve aboveground placement of equipment cabinets, pedestals and similar equipment, pursuant to Section 2.3(d) of this Chapter. For facilities or equipment such as Wireless Facilities that cannot, by their nature, operate unless located above-ground, the Provider and Town shall work to find a suitable location for such facilities or equipment, which may be outside the Public ROW.

(C) Construction Standards. In performing any work in or affecting the Public ROW, the Provider, and any agent or contractor of the Provider, shall comply with the provisions of Section 2.5 of this Chapter and all other applicable Laws.

(D) Restoration Requirements.

1. The Provider, or its agent or contractor, shall restore, repair and/or replace any portion of the Public ROW that is damaged or disturbed by the Provider's Communications Facilities, Poles, Towers or work in or adjacent to the Public ROW as required in Section 2.5 of this Chapter and all other applicable Laws.
2. If the Provider fails to timely restore, repair or replace the Public ROW as required in this subsection, the Town or its contractor may do so and the Provider shall pay the Town's costs and expenses in completing the restoration, repair or replacement.

(E) Removal, Relocation and Abandonment.

1. Within sixty (60) days following written notice from the Town, the Provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any of its Communications Facilities, Poles, Support Structures or Towers within the Public ROW, including relocation of above-ground Communications Facilities underground (consistent with the provisions of this Chapter), whenever the Town has determined, in its sole discretion, that such removal, relocation, change or alteration is necessary for the construction, repair, maintenance, or installation of any Town improvement, the operations of the Town in, under or upon the Public ROW, or otherwise is in the public interest. The Provider shall be responsible to the Town for any damages or penalties it may incur as a result of the Provider's failure to remove or relocate Communications Facilities, Poles, Support Structures or Towers as required in this subsection.
2. The Town retains the right and privilege to cut or move any Communications Facility, Pole, Support Structure or Tower located within the Public ROW of the Town, as the Town may determine, in its sole discretion, to be necessary, appropriate or useful in response to any public emergency. If circumstances permit, the Town shall notify the Provider and give the Provider an opportunity to move its own facilities prior to cutting or removing the Communications Facility, Pole, Support Structure or Tower. In all cases the Town shall notify the Provider after cutting or removing the Communications Facility, Pole, Support Structure or Tower as promptly as reasonably possible.
3. A Provider shall notify the Town of abandonment of any Communications Facility, Pole, Support Structure or Tower at the time the decision to abandon is made, however, in no case shall such notification be made later than 30 days prior to abandonment. Following receipt of such notice, the Provider shall remove its Communications Facility, Pole, Support Structure or Tower at the

Provider's own expense, unless the Town determines, in its sole discretion, that the Communications Facility, Pole, Support Structure or Tower may be abandoned in place. The Provider shall remain solely responsible and liable for all of its Communications Facilities, Poles, Support Structures and Towers until they are removed from the Public ROW unless the Town agrees in writing to take ownership of the abandoned Communications Facilities, Poles, Support Structures or Towers. Upon the issuance of a Permit, the Provider shall provide a removal bond in the amount estimated for the removal of all of the Communication Facilities that are the subject of an Application, such estimated amount to be determined by the Code Enforcement Director, after consultation with the Engineer for the Town.

4. If the Provider fails to timely protect, support, temporarily or permanently disconnect, remove, relocate, change or alter any of its Communications Facilities, Poles, Support Structures or Towers or remove any of its abandoned Communications Facilities, Poles, Support Structures or Towers as required in this subsection, the Town or its contractor may do so and the Provider shall pay all costs and expenses related to such work, including any delay damages or other damages the Town incurs arising from the delay.

(F) As-builts and Maps - Maps showing location of equipment in ROW and as-builts after construction shall be provided to the Town, within thirty (30) days after completion of construction, in conformance to the requirements of the Engineer for the Town.

b. Fees and Charges.

(i) Permit Application Fee. Every Applicant for a co-location shall pay a Permit application fee of \$500.00 for each Application up to five (5) Small Wireless Facilities and \$100.00 for each additional Small Wireless Facility. The fee shall be paid upon submission of the Application.

(ii) Every Application for a new pole in the Right of Way shall pay a Permit application fee of \$1000.00. The fee shall be paid upon submission of the Application.

(iii) ROW Agreement Fee. Every Person requesting a ROW Agreement from the Town shall pay an administrative fee of \$340.00, which shall include the legal costs of drafting such ROW Agreement.

(iii) ROW Use Fee. In exchange for the privilege of non-exclusive occupancy of the Public ROW, the Provider shall pay the Town \$270 per Small Wireless Facility, per year, for as long as the ROW Agreement is effective. The ROW Use Fee shall be due and payable within thirty (30) days of issuance of the ROW Agreement

(iv) Attachment Fees. The Provider shall be subject to an additional attachment fee of \$500.00 if the Small Wireless Facilities will be attached to property (either real or personal) owned by the Town. No attachment will be allowed except after issuance of a permit pursuant to an Attachment Agreement.

(iv) Other Fees. The Applicant or Provider shall be subject to any other generally applicable fees of the Town or other government body, such as those required for electrical permits, building permits, or street opening permits, which the Applicant or Provider shall pay as required in the applicable Laws, as well as attachment fees for the use of Town owned Poles, Towers, Support Structures, ducts, conduits or other structures in the Public ROW, as set forth in attachment agreements authorizing such use.

(v) No Refund. Except as otherwise provided in a ROW Agreement, the Provider may remove its Communications Facilities, Poles or Towers from the Public ROW at any time, upon not less than thirty (30) days prior written notice to the Town, and may cease paying to the Town any applicable recurring fees for such use, as of the date of actual removal of the facilities and complete restoration of the Public ROW. In no event shall a Provider be entitled to a refund of fees paid prior to removal of its Communications Facilities, Poles or Towers.

## Section 2.2 Permit Applications

a. Permit Required. Unless expressly authorized in this Chapter or in writing by the Town, no Person may construct, install or maintain in the Public ROW any Communications Facilities, Poles built for the primary purpose of supporting Communications Facilities, or Towers, including the installation or Collocation of Communications Facilities on existing Poles, Towers, Support Structures or other structures within the Public ROW, without first receiving a Permit. Notwithstanding the foregoing, in the event of an Emergency, a Provider or its duly authorized representative may work in the Public ROW prior to obtaining a Permit, provided that the Provider shall attempt to contact the Town prior to commencing the work and shall apply for a Permit as soon as reasonably possible, but not later than twelve (12) hours after commencing the Emergency work. For purposes of this subsection, an "Emergency" means a circumstance in which immediate repair to damaged or malfunctioning facilities is necessary to restore lost service or prevent immediate harm to persons or property.

b. Permit Application Requirements. The Application shall be made by the Provider or its duly authorized representative and shall contain the following:

(i) The Applicant's name, address, telephone number, and e-mail address, including emergency contact information for the Applicant.

(ii) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the Application.

(iii) A description of the proposed work and the purposes and intent of the proposed facility sufficient to demonstrate compliance with the provisions of this Chapter. The Applicant shall state whether the Applicant believes the proposed work is subject to Administrative Review or Discretionary Review and if the Permit is an Eligible Facilities Request.

(iv) If applicable, a copy of the authorization for use of the property from the Pole, Tower or Support Structure owner on or in which the Communications Facility will be placed or attached.

(v) Detailed construction drawings regarding the proposed Communication Facility.

(vi) To the extent the proposed facility involves Collocation on a Pole, Tower or Support Structure, a structural report performed by a duly licensed engineer evidencing that the Pole,

Tower or Support Structure will structurally support the Collocation (or that the Pole, Tower or Support Structure will be modified to meet structural requirements) in accordance with Applicable Codes.

(vii) For any new aboveground facilities or structures, accurate visual depictions or representations, if not included in the construction drawings.

(viii) If new construction, a plan that would show how co-locations on the new Pole, Tower or Support Structure would be possible for other Providers who may wish to deploy small cell technology in the geographic area of the subject Application.

c. Proprietary or Confidential Information in Application. Applications are public records that may be made publicly available pursuant to the New York State Freedom of Information Law. Notwithstanding the foregoing, Applicant may designate portions of its Application materials that it reasonably believes contain proprietary or confidential information as "proprietary" or "confidential" by clearly marking each portion of such materials accordingly, and the Town shall treat the information as proprietary and confidential, subject to the requirements of the New York State Freedom of Information Law and the Town's determination that the Applicant's request for confidential or proprietary treatment of Application materials is reasonable.

d. Ordinary Maintenance and Repair. A Permit shall not be required for Ordinary Maintenance and Repair. The Provider or other Person performing the Ordinary Maintenance and Repair shall obtain any other permits required by applicable Laws and shall notify the Town in writing at least forty-eight (48) hours before performing the Ordinary Maintenance and Repair.

e. Material Changes. The Town may require payment of an additional Permit application fee in the event the Town determines, in its sole discretion, that material changes to an Application after submission amount to a new Application and will materially increase the time and/or costs of the Permit review process. Unless otherwise agreed to in writing by the Town, any material changes to an Application, as determined by the Town in its sole discretion, shall be considered a new application for purposes of the time limits set forth in Section 2.3.b.(ii), unless otherwise provided by applicable Laws.

f. Application Fees. Unless otherwise provided by applicable Laws, all Applications pursuant to this Chapter shall be accompanied by the Fees required under Section 2.1.b.

g. Effect of Permit. A Permit from the Town authorizes an Applicant to undertake only the activities in the Public ROW specified in the Application and Permit, and in accordance with this Chapter and any general conditions included in the Permit. A Permit does not authorize attachment to or use of existing Poles, Towers, Support Structures or other structures in the Public ROW; a Permittee or Provider must obtain all necessary approvals and pay all necessary fees from the owner of any Pole, Tower, Support Structure or other structure prior to any attachment or use. A Permit does not create a property right or grant Town to the Applicant to interfere with other existing uses of the Public ROW.

h. Duration. Any Permit for construction issued under this Chapter shall be valid for a period of ninety (90) days after issuance and can be extended for an additional ninety (90) days upon written request of the Applicant, at the sole consent of the Town.

i. An Applicant may simultaneously submit up to five (5) Applications for Communications Facilities, or may file a single, consolidated Application covering a batch of not more than twenty (20) such Communications Facilities, provided that the proposed Communications Facilities are to be deployed on the same type of structure using similar equipment and within an adjacent, related geographic area of the Town. If the Applicant files a consolidated application, the Applicant shall pay the application fee calculated as though each Communication Facility were a separate Application. No Applicant shall submit more than one (1) consolidated application over a six (6) month period. The Code Enforcement Officer has the discretion to determine whether a Provider is submitting a consolidated Application through the submission of multiple single Small Wireless Facilities.

### **Section 2.3 Administrative Review**

a. Permitted Use. The following uses within the Public ROW shall be permitted uses, subject to Administrative Review and issuance of a Permit as set forth in this Section 2.3. All such uses shall be in accordance with all other applicable provisions of this Chapter, including without limitation, those set forth in Section 2.5 below and the terms of any ROW Agreement. Administrative Review will not be available for consolidated Applications or simultaneous Applications for more than five (5) Communication Facilities.

(i) Collocation of a Small Wireless Facility that does not exceed the maximum height set forth in Subsection 2.3.c or a Collocation that qualifies as an Eligible Facilities Request.

(ii) Modification of a Pole, Tower or Support Structure or Replacement of a Pole for Collocation of a Communications Facility where the modification or Replacement qualifies as an Eligible Facilities Request.

(iii) Construction of a new Decorative Pole or a monopole Tower (but no other type of Tower) to be used for a Small Wireless Facility that does not exceed the maximum height set forth in Subsection 2.3.c, provided that there are existing poles of similar height within one hundred (100) feet of either side of the proposed new Pole or monopole Tower.

(iv) Construction of a Communications Facility, other than those set forth in subsections (i), (ii) or (iii) in this Section 2.3.a, involving the installation of coaxial, fiber-optic or other cabling, that is installed underground or aboveground between two or more existing Poles or an existing Pole and an existing Tower and/or existing Support Structure, and related equipment and appurtenances.

(v) Collocation of a Small Wireless Facility on a Pole, Tower, Support Structure or building that is in the Federal, State or County Right of Way or on private property.

#### **b. Application Review.**

(i) The Town shall review the Application either under the Administrative Review or Discretionary Review, as the case may be, and, if the Application conforms with applicable provisions of Section 2.2 and this Section, the Town shall issue the Permit, subject to the design standard set forth in Section 2.3(d) of this Chapter.

(ii) Except as otherwise provided by applicable Laws, the Town shall:

(A) Within ten (10) days of receiving an Application, notify the Applicant if the Application is incomplete, and identify the missing information. The Applicant may resubmit the completed Application within thirty (30) days without additional charge, in which case the Town shall have ten (10) days from receipt of the resubmitted Application to verify the Application is complete, notify the Applicant that the Application remains incomplete or, in the Town's sole discretion, deny the Application; and

(B) Make its final decision to approve or deny the Application within sixty (60) days for a collocation, and ninety (90) days for any new structure, after the Application is complete (or deemed complete in the event the Town does not notify the Applicant that the Application or resubmitted Application is incomplete).

(iii) The Town shall advise the Applicant in writing of its final decision.

c. **Maximum Height of Permitted Use. Small Wireless Facilities, and new, modified or Replacement Poles, Towers and Support Structures in the Public Right of Way may be approved through Administrative Review as provided in Section 2.3.a only if the following requirements are met:**

(i) Each new, modified or Replacement Pole, Tower or Support Structure installed in the Public ROW shall not exceed thirty-five (35) feet in height.

(ii) New Small Wireless Facilities in the Public ROW shall not exceed thirty-five (35) feet in height.

d. **Design Standards.** The Design Standards for Communication Facilities, Poles built for the sole or primary purpose of supporting Communications Facilities, or Towers shall be adopted by the Town Board and shall be published on the official Town Website and made available to all Applicants at their request or upon submission of an Application. The Design Standards shall be subject to change upon thirty (30) days' notice to an Applicant and upon a majority vote of the Town Board.

**Section 2.4 Discretionary Review and Approval.** All other uses within the Public ROW or on private property not expressly set forth or referenced in Section 2.3.a shall require compliance with, and issuance of, a site plan approval pursuant to Section 320-39 of the Town Code. In determining the deployment and placement of Communication Facilities, the Planning Board shall consider the following criteria and its impact on the surrounding neighborhood during the Site Plan review process: (i) the design standards set forth in Section 2.3(d) of this Chapter; (ii) the compatibility of further deployments and their potential impact on the surrounding neighborhood; (iii) the potential for Collocation of other Provider's Communication Facilities; (iv) the density fulfillment needs of the neighborhood.

**Section 2.5 General Public ROW Installation Requirements.**

a. **General Work Requirements.**

(i) **General safety and compliance with laws.** The Permittee shall employ due care during the installation, maintenance or any other work in the ROW, and shall comply with all safety and Public ROW protection requirements of applicable Laws, Applicable Codes, and any generally applicable Town guidelines, standards and practices, and any additional commonly accepted

safety and Public ROW-protection standards, methods and devices (to the extent not inconsistent with applicable Laws).

(ii) Traffic control. Unless otherwise specified in the Permit, the Permittee shall erect a barrier around the perimeter of any excavation and provide appropriate traffic control devices, signs and lights to protect, warn and guide the public (vehicular and pedestrian) through the work zone. The manner and use of these devices shall be described within a traffic control plan in accordance with the Uniform Manual of Traffic Control Devices. The Permittee shall maintain all barriers and other traffic control and safety devices related to an open excavation until the excavation is restored to a safe condition or as otherwise directed by the Town.

(iii) Interference. The Permittee shall not interfere with any existing facilities or structures in the Public ROW, and shall locate its lines and equipment in such a manner as not to interfere with the usual traffic patterns (vehicular or pedestrian) or with the rights or reasonable convenience of owners of property that abuts any Public ROW.

(iv) Utility Locates. Before beginning any excavation in the Public ROW, the Permittee shall comply with CALL BEFORE YOU DIG.

b. Compliance with Permit.

(i) State that the Permittee must follow permit requirements. All construction practices and activities shall be in accordance with the Permit and approved final plans and specifications. The Town and its representatives shall be provided access to the work site and such further information as they may require to ensure compliance with such requirements. All work that does not comply with the Permit, the approved plans and specifications for the work, or the requirements of this Chapter, shall be removed at the sole expense of the Permittee. The Town may stop work in order to assure compliance with the provision of this Chapter.

(ii) Address any needed additional permits. In addition to obtaining a Permit for installation of a Communications Facility, Poles built for the sole or primary purpose of supporting Communications Facilities, or Towers in the Public ROW, an Applicant must obtain all other required permits.

c. Mapping Data. The Permittee shall provide to the Town as-builts, in a format designated by the Town or otherwise compatible with such format, showing the location of Communications Facilities, Poles, Support Structures and Towers upon completion of the permitted work.

d. Participation in Dig Safe NY utility locating.

**Section 2.6** Attachment to and Replacement of Decorative Poles. Notwithstanding anything to the contrary in this Chapter, an Applicant may not install a Small Wireless Facility on a Decorative Pole, or replace a Decorative Pole with a new Decorative Pole unless the Town has determined, in its sole discretion, that each of the following conditions has been met:

a. The Application qualifies for issuance of a Permit under Section 2.3.a;

b. The attachment and/or the replacement Pole is in keeping with the aesthetics of the Decorative Pole; and

c. Notwithstanding anything to the contrary in this Chapter, an Applicant may not install a Small Wireless Facility on a Decorative Pole, replace a Decorative Pole with a new Decorative Pole, or install new above-ground Communications Facilities in a Residential Zoning District unless the Town has determined, in its sole discretion, that each of the following conditions has been met:

(i) The Application qualifies for issuance of a Permit under Section 2.3.a; b. The attachment and/or the replacement Pole is in keeping with the aesthetics and character of the Decorative Pole and/or the Residential Zoning District;

**Section 2.7** Violation of this Chapter. Violation of any of the provisions of this Chapter shall be a violation punishable with a civil penalty of \$250 for each violation. Each day that a violation occurs or is permitted to exist by the Applicant or Provider constitutes a separate offense.

**Section 2.8** Effective Date. This Chapter shall take effect upon the filing with the Secretary of State.

These Standards and General Guidelines were adopted by the Town Board on \_\_\_\_\_, 2019, pursuant to Chapter \_\_\_\_, Section 2.3(d) of the Town of Lysander Code, relating to the placement of small cell wireless facilities in the Town of Lysander. All words and

#### A General Design Guidelines

- (1) All Communications Facilities shall comply with the United States Department of Transportation Manual on Uniform Traffic Control Devices (MUTCD), the National Electric Code (NEC), all Town of Lysander Codes, and any other applicable local, state, and federal rules and regulations.
- (2) Utility Underground Required. All service lines to the proposed Communication Facility shall be underground if all other utilities in the immediate area are also underground.
- (3) Power and Fiber Optic Supply.
  - (a) Independent Power Source Required. Communication Facilities subject to a ROW Agreement may not use the same power source providing power for the existing facilities original to the purposes of the support structure, unless specifically authorized by the owner of the support structure and approved by the Town Engineer. Independent power source must be contained within a separate conduit on the existing support structure.
  - (b) Applicant shall coordinate, establish, maintain and pay for all power and communication connections with private utilities.
- (4) Wiring, Cables and Conduit Requirements.
  - (a) All wiring and cables must be housed within the steel or other metal support structure pole and extended vertically within a flexible conduit. In non-steel or solid support structures, all wiring and cables must be appropriately protected in their entirety and covered with a material that matches the non-steel or solid support structures so as not to be visible from public view.
  - (b) Above ground wires, cables, connections and conduits are prohibited, except as specified in this Deign Guideline Manual based on the wireless support structure.
  - (c) Spools and/or coils of excess fiber optic or coaxial cables or any other wires shall not be stored on the pole except completely within the approved enclosures or cabinets.

(5) Lighting. Lighting associated with Communication Facilities is prohibited. Any internal lights associated with electronic equipment must be shielded from public view.

(6) Signage. Signage is prohibited on all small cell facilities and wireless support structures, including stickers, logos, and other non-essential graphics and information unless required by the FCC.

(7) Work Permits. All operators must require the appropriate work permit by the Town for any activity described in Chapter A337 of the Code and for any activity for which consent is authorized under the same.

## B. Existing Wireless Support Structures

(1) Collocation encouraged. The collocation of Communication Facilities on existing Poles, Towers and Support Structures is strongly encouraged as a means to minimize the extent of intrusion of redundant support structures within the Town ROW or on private property.

(2) Structural Integrity of Existing Support Structures.

(a) The Town shall not authorize any attachments to Town owned infrastructure, Pole, Tower or Support Structure that negatively impacts the structural integrity of said infrastructure, Pole, Tower or Support Structure.

(b) The Town may condition approval of the Collocation on replacement or modification of the Communication Facility at the Provider's cost if the Town determines that replacement or modification is necessary for compliance with the construction and/or safety standards of the Town. A replacement or modification of the Communication Facility shall conform to the applicable design guideline(s) and the Town's applicable specifications for the type of structure being replaced. The Town may retain ownership of a replacement wireless support structure.

(3) Maximum Permitted Height. For an existing Communication Facility, the Antenna and any associated shroud or concealment material are permitted to be collocated at the top of the existing wireless support structure and shall not increase the height of the existing wireless support structure by more than five (5) feet or a total of thirty-five (35) feet.

(4) Right to reserve space on Pole, Tower or Support Structure. The Town may reserve space for future public safety or transportation uses in the right-of-way or on a Pole, Tower or Support Structure owned by the Town in a documented and approved plan in place at the time an Application is filed.

(a) A reservation of space shall not preclude placement of a Pole or Collocation of a Communication Facility.

(b) If replacement of the Town's Pole or Support Structure is necessary to accommodate the Collocation of the Communication Facility and the future use, the Provider shall pay for the replacement of the Pole or Support Structure, and the replaced Pole or Support Structure must accommodate the future use.

## New Wireless Pole, Tower or Support Structures

### (1) Location

#### (a) Required Setbacks.

(1) The centerline of new Pole, Tower or Support Structures shall be installed in alignment with existing street trees and other poles along the same right-of-way when possible.

(2) In no case shall a new Pole, Tower or Support Structure be located less than what is required in the ROW Agreement from any of the roadway/face of curb, sidewalk, or shared use path as measured to the nearest part of the support structure.

(3) New Poles, Towers or Support Structures shall be located a minimum of six feet from any permanent object, structure or existing lawful encroachment into the right of way, or as determined in the ROW Agreement.

(b) Required Spacing. Collocation is strongly encouraged. If not feasible, a minimum of 300 linear feet between Poles, Towers, Support Structures or Communication Facilities is required. To the extent feasible, any new or replace Pole, Tower or Support Structure constructed in the ROW shall be at the property line between two houses and not in direct line of site from the front of a house.

### (2) Maximum Permitted Height

(a) For a new wireless support structure in a Commercial or Industrial Zone, the overall height of the wireless support structure and any collocated antennas shall not be more than forty feet (40') in height above established grade measured at the base of the wireless support structure.

(b) The Town shall limit the maximum permissible height of wireless support structures in residential zones to not more than thirty-five feet (35') in height above established grade measured at the base of the structure.

### (3) Design Requirements

(a) Shape and Dimensions. All new Poles, Towers or Support Structures shall be constructed of solid hot-dipped galvanized steel, be round in shape with the pole shaft tapered in diameter from the base to the top with a maximum of twelve (12) inches at the base.

(b) Transformer Base. All new Poles, Towers or Support Structures shall include a one-piece cast aluminum alloy transformer base in a breakaway design, consistent with engineering standards subject to the Town Engineer's review and approval.

(c) Foundation/Footer.

(1) All new Poles, Towers or Support Structures must be supported with a reinforced concrete foundation and footer designed, stamped, sealed and signed by a professional engineer licensed and registered in the State of New York, and subject to the Town Engineer's review and approval.

(2) Anchor bolts must be constructed from steel (high strength) per ATSM A36, threaded (J-Type/L-Type), hot dip galvanized steel per ODOT CM Item No. 711.02, and in a strength and diameter, stamped, sealed and signed by a professional engineer licensed and registered in the State of New York, and subject to the Town Engineer's review and approval.

(3) All anchor bolts must be concealed from public view with an appropriate Pole boot or cover, powder coated to match the Pole, Tower or Support Structure.

(d) Color. New Poles, Towers or Support Structures, including the breakaway transformer base, shall have a powder coated finish in the dark earth tone colors such as dark green, dark brown, gray, or black consistent with the color of other Poles, Towers or Support Structures in the immediate vicinity.

(4) Multiple requests for wireless support structures in violation of spacing requirements. If multiple requests are received by the Town to install two or more Poles, Towers or Support Structures that would violate applicable spacing requirements outlined herein, or to collocate two or more Communication Facilities on the same wireless Pole, Tower or Support Structure the Town may resolve conflicting requests through whatever reasonable and nondiscriminatory manner it deems appropriate.

(5) Town directed alternate location for Poles, Towers or Support Structures. The Town may propose an alternate location to any proposed location of a new Pole, Tower or Support Structure, subject to the following:

(a) That the alternate location is within one hundred feet (100') of the proposed location or within a distance that is equivalent to the width of the right-of-way in or on which the new is proposed, whichever is greater; and

(b) The operator shall use the alternate location if it has the right to do so on reasonable terms and conditions and the alternate location does not impose technical limits or significant additional costs.

(6) Waiver to Town directed alternate Pole, Tower or Support Structure location or undergrounding requirements.

(a) Provider may seek a waiver from the Planning Board of the undergrounding or alternative location requirements for the placement of a new Pole, Tower or Support Structure to support Communication Facilities if the Provider is unable to achieve its service objective using a Communication Facility under the following circumstances:

1. From a location in the right-of-way where the prohibition does not apply;
2. In a utility easement the Provider has the right to access; or
3. In or on other suitable locations or structures made available by the Town at reasonable rates, fees, and terms. (b) The Town shall process waivers in a reasonable and nondiscriminatory manner that does not have the effect of prohibiting the provision of wireless service.

(D) Antenna.

(1) Location. All antenna to be installed on new or existing wireless Poles, Tower or Support Structures shall be mounted to the top of the Pole, Tower or Support Structure and aligned with the centerline of the Pole, Tower or Support Structure, unless otherwise agreed to by the Town based on the specific context and characteristics of the Communication Facility.

(2) Size. Each Antenna shall be located entirely within an enclosure of not more than six cubic feet in volume or, in the case of an Antenna that has exposed elements, the Antenna and all of its exposed elements could fit within an enclosure of not more than twelve cubic feet in volume.

(3) Design.

(a) Shape. Antennas shall be cylindrical in shape, or completely housed within a cylindrical enclosure, radome or shroud.

(b) Color. Exposed Antennas and Antenna enclosures shall match the color specifications of the Pole, Tower or Support Structure.

(E) Small Wireless Facilities Installed on Wireless Support Structures

(1) Size. Exclusive of the Antenna, all wireless equipment associated with the Communication Facility shall not cumulatively exceed twenty-eight cubic feet in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

(2) Equipment Enclosures Required. All Communication Facilities mounted to wireless Poles, Towers or Support Structures or located on the ground shall be fully contained within enclosures or cabinets.

(3) Required Clear Height. All Communication Facilities mounted to a wireless Pole, Tower or Support Structure shall provide a minimum of 10 feet of clear space on the pole as measured from established grade to the lowest point of any facility/equipment cabinets or concealment apparatus mounted to the Pole, Tower or Support Structure.

(4) Maximum Horizontal Offset from Support Structure. Communication Facility's equipment cabinets or enclosures shall not extend more than 10 inches beyond the Pole, Tower or Support Structure of centerline in all directions.

(5) Design.

(a) Cabinet or Enclosure Shape.

(1) Communication Facility equipment cabinets or enclosures shall be rectangular in shape, with the vertical dimensions being greater than the horizontal.

(2) Generally, the cabinet or enclosure shall be no wider than the maximum diameter of the support structure.

(b) Installation Method.

(1) All Pole mounted equipment cabinets or enclosures must be installed as flush to the Pole as possible.

(2) Any installation brackets connecting the cabinets or enclosure to the Pole shall not extend more than 2 inches from the Pole, and shall include metal flaps (or wings) to fully conceal the gap between the cabinet and Pole.

- (c) Cabinet or Enclosure Material. (To be discussed)
- (d) Color. Cabinets or enclosures shall match the color specification of the Pole, Tower and/or Support Structure.

(F) Ground Mounted Small Cell Facilities

(1) Location.

(a) Required Setbacks.

(1) In no case shall ground mounted small cell facilities be located no less than required in the ROW Agreement from the road-way/face of curb, sidewalk, or shared use path as measured to the nearest part of the cabinet or enclosure.

(2) Ground mounted Communication Facilities and associated required screening or shrouding shall be located a minimum of six feet from any permanent object or existing lawful encroachment into the right-of-way.

(2) Size. All Communication Facility equipment associated with the Facility shall not cumulatively exceed twenty-eight (28) cubic feet in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

(3) Maximum Permitted Height. The maximum height for ground mounted Communication Facilities shall not exceed 2.5 feet as measured from established grade at the base of the facility.

(4) Equipment Enclosures Required. All ground mounted Communication Facilities shall be fully contained within enclosures or cabinets.

(5) Design Requirements.

(a) Screening required. Evergreen plant material shall be used for screening and shall be planted and maintained to ensure that the equipment will be screened to its full height two years of planting without obstructing the view of motor traffic or pedestrians.

(b) Concrete Pad or Slab. In accordance with state and local standards approved by the Director of Planning and Development or Code Enforcement Director.

(c) Breakaway Design. All objects placed within the ROW shall feature breakaway design.

(d) Color. Ground mounted Communication Facility cabinets and enclosures shall be dark green or black powder coated finish.

(G) Construction and Safety Requirements.

(A) Approval of the collocation or replacement or modification of the Pole, Tower or Support Structure is conditioned upon the operators assumption of costs of the Town determines that replacement or modification is necessary for compliance with its written construction or safety standards.

(B) Prevention of failures and accidents. Any person who owns a Communication Facility sited in the right-of-way shall at all times employ ordinary and reasonable care and install and maintain in use nothing less than the best available technology for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public.

(C) Compliance with fire safety and FCC regulations. Communication Facilities, wires, cables, fixtures, and other equipment shall be installed and maintained in substantial compliance with the requirements of the National Electric Code, all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property.

(D) Surety bond or equivalent financial tool for cost of removal. All owners must procure and provide to the Town a renewable bond, or must provide proof of an equivalent financial mechanism, to ensure compliance with all provisions of this section. The renewable bond or equivalent financial method must specifically cover the cost of removal of unused or abandoned small cell facilities or damage to Town property caused by an operator or its agent of each Communication Facility which the owner installs in the right-of-way in case the Town has to remove or pay for removal of the wireless facility. Two acceptable alternatives to a bond include a funds set-aside and a letter of credit.

(H) Indemnify and Hold Town Harmless.

Any Provider who owns or operates Communication Facility or Pole, Tower or Support Structure in the public way shall indemnify, protect, defend, and hold the Town and its elected officials, officers, employees, agents, and volunteers harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees to include reasonable attorney fees and costs of defense, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury or death, property damage or other harm for

which recovery of damages is sought, to the extent that it is caused by the negligence of the operator who owns or operates small cell facilities and wireless service in the public way, any agent, officer, director, representative, employee, affiliate, or subcontractor of the operator, or their respective officers, agents, employees, directors, or representatives while installing, repairing, or maintaining facilities in a public way. Said Provider shall also hold the Town and/or its agent(s) harmless in the event any action by the Town and/or its agent(s) negligently or recklessly disrupts, destroys, and incapacitates small cell facility or wireless support structure in the public way created under these Design Guidelines and Standards.

# RECORD OF QUOTES

April 3, 2019  
10:00 AM

FOR: Town of Lysander Splash Pad Trades RFP

## Masonry

ITEM NO.	DESCRIPTION	UNIT	QUANTITY	Concrete Slip Form Inc.		Empire Masonry		Distinguished Landscapes	
				COST/UNIT	AMOUNT	COST/UNIT	AMOUNT	COST/UNIT	AMOUNT
1	Splash Pad Masonry Construction	LS	1	\$27,500.00	\$27,500.00	\$35,000.00	\$35,000.00	\$49,000.00	\$49,000.00
<b>TOTAL BASE BID</b>					<b>\$27,500.00</b>		<b>\$35,000.00</b>		<b>\$49,000.00</b>

## Plumbing

ITEM NO.	DESCRIPTION	UNIT	QUANTITY	Town Mechanical Inc.		Empire Masonry		T&S Mechanical	
				COST/UNIT	AMOUNT	COST/UNIT	AMOUNT	COST/UNIT	AMOUNT
1	Splash Pad Plumbing Construction	LS	1	\$14,650.00	\$14,650.00	\$32,771.00	\$32,771.00	NB	NB
<b>TOTAL BASE BID</b>					<b>\$14,650.00</b>		<b>\$32,771.00</b>		<b>NB</b>

## Electrical

ITEM NO.	DESCRIPTION	UNIT	QUANTITY	Quinn Construction		Caryl Electric		Kahrs Construction	
				COST/UNIT	AMOUNT	COST/UNIT	AMOUNT	COST/UNIT	AMOUNT
1	Splash Pad Electrical Construction	LS	1	\$3,500.00	\$3,500.00	\$6,299.00	\$6,299.00	NB	NB
<b>TOTAL BASE BID</b>					<b>\$3,500.00</b>		<b>\$6,299.00</b>		<b>NB</b>

## Fence

ITEM NO.	DESCRIPTION	UNIT	QUANTITY	Arrow Fence		Atlas Fence		Butler Fence	
				COST/UNIT	AMOUNT	COST/UNIT	AMOUNT	COST/UNIT	AMOUNT
1	Splash Pad Fence Construction	LS	1	\$6,670.00	\$6,670.00	\$8,240.00	\$8,240.00	NB	NB
<b>TOTAL BASE BID</b>					<b>\$6,670.00</b>		<b>\$8,240.00</b>		<b>NB</b>

**TOWN of LYSANDER**  
**8220 LOOP ROAD**  
**BALDWINSVILLE, NEW YORK 13027**  
**315-638-4264**

April 2, 2019

Lysander Town Board  
8220 Loop Road  
Baldwinsville, NY 13027

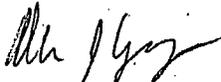
Re: Timber Banks

Subj: Section 3 Phase 2 Punch list Security Reduction

Dear Town Board Members:

The Developer of Timber Banks has completed item 1 included in the attached Punch List for Sections 3 phases 2 of the Timber Banks Subdivision. At this time it would be appropriate for the Board to reduce the punch list security requirement to \$29,000 for the tasks included in the attached Revised Final Punch List dated April 2, 2019.

Regards



Allen J. Yager, P.E.  
Town of Lysander Engineer

Attachment

Cc: Gary Pooler, President Pooler Development  
Denny Pooler, Vice President Pooler Development

**Final Punch List**

**Timber Banks Section 3 Phase 2**

~~April 2, 2018~~

April 2, 2019

1. <del>Install third pump and associated piping in existing pump station</del>	<del>\$ 20,000</del>
2. Furnish and install 1 1/2" Type 6F asphalt top course and tack coat	\$ 22,000
3. Place topsoil, seed and establish turf in road right-of-way	\$ 3,000
4. Clean closed drainage system once all land in the development has been stabilized and the asphalt top course has been placed.	\$ 2,000
5. Install monuments	\$ 2,000
<b>Total</b>	<del>\$ 49,000</del>
<b>Total (4/2/2019)</b>	<b>\$ 29,000</b>



Syracuse  
P.O. Box 5550  
Syracuse, New York 13220  
+1 (888) 443-1910 Fax: +1 (866) 548-7564

### Notice of Cancellation and/or Termination

03/29/2019

Town of Lysander  
8220 Loop Rd.  
Baldwinsville, New York 13027

RECEIVED  
APR 01 2019  
TOWN CLERK  
TOWN OF LYSANDER

**Certified Receipt Number:**

**Bond Number:** 837068133

**Cross Reference:**

**Principal:** Pooler Enterprises, Inc.

**Present Penal Sum:** 49,000 USD

**Bond Description:** license and permit Timber Banks Section 3 Phase 2 Final Punch list.

**Original Effective Date:** 04/13/2018

**Cancellation Date:** 04/13/2019

We hereby cancel the above referenced bond in accordance with the cancellation/termination provisions contained in the bond. If, for any reason, the effective date of this Notice does not fully comply with the cancellation/termination provisions contained in the bond, then this Notice shall be deemed amended to contain the earliest effective date which is in compliance with the provisions of the bond.

**Reason:** Bond No Longer Needed

**Cancellation Reason Comments:** NOC effective 30 days from Mailed date.

**Reply to:**

Syracuse  
P.O. Box 5550  
Syracuse, New York 13220  
+1 (888) 443-1910 Fax: +1 (866) 548-7564

Liberty Mutual Insurance Company

By: Timothy A. Mikolajewski  
Timothy A. Mikolajewski, Assistant Secretary



Pooler Enterprises, Inc.  
783 Wangum Road  
P.O. Box 436  
Fishers, New York 14453

**COPY**

- Oblgee
- Principal
- Producer
- Home Office
- Underwriting Office

## INTERMUNICIPAL WASTEWATER AGREEMENT

**THIS AGREEMENT** made the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the COUNTY OF ONONDAGA, having its principal offices at 421 Montgomery Street, Syracuse, New York 13202 (the "County"), and the Town of Lysander having its principal offices at 8220 Loop Road, Baldwinsville, New York 13027 (the "Municipality"); and

**WHEREAS**, the Onondaga County Sanitary District ("the District") owns, operates and maintains an extensive network of trunk and interceptor sewers and treatment plants within the territorial jurisdiction of the District; and

**WHEREAS**, the District's ability to effectively manage the District sewer system is affected by the proper maintenance of tributary sewer systems owned and operated by municipalities within the District that collect sewage and other wastewater and discharge it to District-owned facilities; and

**WHEREAS**, the introduction of large volumes of stormwater into the sanitary sewer system during periods of wet weather can result in sanitary sewer overflows ("SSOs") and combined sewer overflows ("CSOs") and the release into the environment of untreated sewage and can also result in basement backups and other undesirable consequences that may be detrimental to public health, the public convenience, and/or may result in creation of nuisance conditions if not addressed; and

**WHEREAS**, the aforesaid conditions may also result from lack of routine maintenance, repair, replacement, or upgrades to meet demands for increased capacity; and

**WHEREAS**, cooperation in supplying service between municipalities is authorized and encouraged by Articles 5-G and 6 of the General Municipal Law; and

**WHEREAS**, Section 21 of Local Law No. 1 of 2011 authorizes the County Executive of Onondaga County (the "County Executive") to enter into agreements to assure that maintenance and operation of public sewers owned by municipalities within the District conform to the provisions of said Local Law; and

**WHEREAS**, ordinarily the towns and villages within the County do not have the personnel, equipment and materials necessary for the maintenance of their public sewers, pumping stations and sewage treatment plants; and

**WHEREAS**, the County through its Department of Water Environment Protection ("OCDWEP") has the required personnel, equipment and materials for the maintenance of public sewers, pumping stations and sewage treatment plants; and

**WHEREAS**, it will be for the joint benefit of the County and the Municipality to contract for the provision of said service so that all publicly-owned sewers within the County are maintained in a manner that promotes, to the maximum extent possible, a high level of capacity and effective operation; and

**NOW, THEREFORE**, the parties hereto do mutually agree as follows:

**1. CANCELLATION AND WAIVER OF NOTICE**

This Agreement supersedes all prior contracts between the parties hereto for the same services provided for herein. By mutual consent of the parties, any and all requirements as to notice of intention to terminate said prior contracts is hereby waived, and all such prior contracts are hereby cancelled in their entirety effective the date of execution by the County Executive of this Agreement, reserving, however, to the County any claims for services rendered to the Municipality prior to the execution of this Agreement.

**2. DEFINITIONS**

The following words (and plurals thereof) and phrases shall have the meanings set forth herein unless the context in which they appear warrants that a different meaning be given:

- *Agreement*: this Intermunicipal Wastewater Agreement.
- *Backwater valve*: a device or valve installed in the building drain or sewer pipe where a sewer is subject to backflow.
- *Certification of inspection*: a written statement from a certified building inspector, licensed plumber, professional engineer, or plumbing inspector employed by OCDWEP Division of Plumbing, setting forth the existing conditions of: (i) a previously occupied existing house, building or property used for human occupancy, employment, recreation, manufacturing, commercial or other purposes; and (ii) new construction or substantial reconstruction describing with specificity the condition of the roof drains, sump pump, or other prohibited stormwater or groundwater connections or sources of inflow or infiltration found, or the lack thereof, as set forth in Sections 6, 7 and 8 of Local Law No. 1 of 2011.
- *County*: the County of Onondaga.
- *County Executive*: the County Executive of the County of Onondaga.
- *District treatment facilities*: The wastewater treatment plants and associated interceptor sewers, trunk sewers, pump stations and related facilities owned by the District.
- *Effective date*: the date on which this Agreement is fully executed by the parties.
- *Flow meter*: a device that measures the flow rate and volume of sanitary sewage and provides a record of the flow data on a continuous basis.

- *Footer drain, drain tile, sub-building drain:* those portion(s) of a drainage system that collect subsurface water and convey such water to a place of disposal.
- *I&I:* inflow and infiltration, as defined below.
- *Infiltration:* water entering a sewer system, including sewer service connections, from the ground through such means as, but not limited to, defective pipes, pipe joints, connections, or manhole walls. Infiltration does not include, and is distinguished from, inflow.
- *Inflow:* water discharged into a sewer system, including service connections from such sources as, but not limited to, roof leaders, cellars, yards, and area drains, cooling water discharges, drains from springs and swampy areas, manhole covers, cross-connections from storm sewers, catch basins, storm waters, surface run-off, street wash waters or drainage. Inflow does not include, and is distinguished from, infiltration.
- *Metrics:* measurements of system performance that form a basis for district recommendations, decisions or actions.
- *NYSDEC:* the New York State Department of Environmental Conservation.
- *Maintenance:* the term "maintenance" as used in this Agreement shall be limited to the services to be provided by OCDWEP as specifically enumerated in this Agreement. The term "maintenance" as used in this Agreement shall not include repair, reconstruction, replacement or construction of any sewer, pump station or other facility or device owned by the Municipality and used for collection, conveyance storage or other activity related to collection, pumping, transportation, storage or treatment of wastewater and/or stormwater.
- *OCDWEP:* the Onondaga County Department of Water Environment Protection.
- *Offset plan:* a plan that establishes a program to ensure the flow, in one or more segments of the publicly-owned treatment works exceeding its hydraulic or organic capacity, expected from, or contributed by, any new connection to the County interceptor sewers and public sewers tributary thereto is offset by the removal of infiltration and/or inflow, in that segment, in an amount fixed by the Commissioner of OCDWEP.
- *Party or parties:* one or more of the municipalities signing this Agreement with the County.
- *Persistent maintenance:* a defect or deficiency that results in greater than four (4) alarm responses in a calendar year or results in regular maintenance greater than once per month or the defect results in a reportable sanitary

sewer overflow.

- *Project sponsor/project applicant:* any person who proposes to fund, approve or undertake a project in the District.
- *Public sewer:* a sewer in which all owners of abutting properties have equal rights and which is owned, controlled, operated and maintained by the Municipality.
- *Service area:* one or more areas located on whole or in part within a party's or parties' jurisdiction that are delineated as such on the map annexed to this Agreement as "Exhibit A".
- *SPDES permit:* State Pollutant Discharge Elimination System Permit issued by the New York State Department of Environmental Conservation.
- *Substantial reconstruction:* the alteration through remodeling or expansion or other changes made to an existing structure that includes modifications to its wastewater and/or stormwater systems which change its size and/or intended uses in ways that materially increase or is likely to materially increase wastewater and/or stormwater flow.
- *Sump pump:* a mechanism used for removing water or wastewater from a sump or wet well; it may be energized by air, water, steam, or electric motor; ejectors and submerged centrifugal pumps, either float or manually controlled, are often used for the purpose.

### **3. TERM**

The term of this Agreement shall commence upon execution by the County Executive and shall continue until December 31, 2019, unless cancelled with or without cause by either party hereto at any time upon thirty (30) days' written notice of the intention to so cancel.

### **4. SCOPE OF SERVICES**

Pursuant to Local Law No. 1 of 2011, the Onondaga County Legislature established a Capacity Maintenance, Operation and Management Program within the District. An objective of said Local Law is to assure that the capacity of District Treatment Facilities to convey and treat sanitary waste is preserved by reducing, to the maximum extent practical, excessive inflow and infiltration. An objective of this Agreement is to provide the Municipality with the information necessary to enable the Municipality to operate and maintain its municipally-owned system in compliance with the requirements of Local Law No. 1 of 2011 in the most cost effective manner. Consistent with this objective, the County shall provide the following maintenance services:

## **A. Sewer**

- Vacuum flushing
- Root removal (main line/publicly-owned lateral)
- Grease removal
- CCTV inspection (main line)
- Lateral inspection (as requested)
- Lateral blockage removal (does not include lateral repair)
- Main line blockage removal (grit, grease, roots and rocks) but which does not include repair or replacement of bad joints or failed lines (Maintenance work includes bucket machines, sewer snakes and jet flushing)
- Manhole repair
  - Includes ring and cover replacement or reset (new ring and cover to be purchased by owner)
  - Raising to grade
  - Installation of bricks, riser rings and parging (does not include barrel section replacement)
  - Bench wall repair (does not include repair or replacement of structures)
  - Installation of water tight covers and rain dishes
- Infrastructure inspection
- Management of maintenance records

## **B. Pump Station**

- Weekly inspections (reduced frequency available upon owner's request)
- Quarterly vacuum flush – increased frequency as required
- Pump Repair – limited to County capabilities
- Pump replacement \*
- Emergency generator maintenance
- Instrumentation repair and replacement \*
- Electrical periodic maintenance
- Mechanical piping repair and replacement \*
- Alarm monitoring
- Emergency response (first responders until emergency contractor mobilizes)
- Snow removal, lawn maintenance, E-911 compliance, painting as required and driveway maintenance (does not include paving)
- Management of records
- Coordination with owner's engineer

\* Equipment and materials with an aggregate cost of greater than \$500 will need to be procured by the owner.

## **C. Underground Facility Location**

- Location of underground facilities

- Response to emergency underground dig safety tickets
- Record tickets

**D. Emergency Services\***

- Emergency generator deployment
- Bypass pump deployment
- Tanker service
- 24-hour dispatch

\* Bypass pumping and generator installation will be conducted until the owner procures emergency contractor services, or 24 hours, whichever comes first.

**E. Reporting Assistance**

- Reporting of sanitary sewer overflow to NYSDEC to comply with current regulations
- Assistance to owner's engineer with data, mapping and facility documentation

**F. Other Services**

- Other services are available if requested in writing by the owner and accepted by OCDWEP. These services include:
- \_\_\_\_\_
- \_\_\_\_\_

**5. COMPENSATION FOR MAINTENANCE SERVICES**

The Municipality hereby agrees to pay the County for all such work, labor, services rendered and materials furnished in the maintenance of said public sewers, pumping stations and sewage treatment plants, such sum or sums duly documented and invoiced by OCDWEP to the Municipality for services rendered. Such billing shall reflect the actual costs and expenses incurred by OCDWEP, including the cost of workers' compensation and employers' liability insurance and comprehensive general liability insurance. Payment shall be due from the Municipality by January 31<sup>st</sup> of the following year after the rendering of a proper itemized bill therefor.

**6. INFLOW AND INFILTRATION ("I&I") REDUCTION AND CORRECTION OF PERSISTENT MAINTENANCE PROBLEMS**

**A.** Inflow and Infiltration Reduction: The function and purpose of a sanitary sewer is to convey sanitary flow to a treatment plant. I&I must be minimized as these extraneous flows of groundwater, stormwater and other sources of surface and/or unpolluted cooling water reduce the capacity of the sewer system to transport wastewater. The Municipality

agrees that it will search for sources of excessive I&I and promptly address any I&I within the Municipality's system upon discovery or notification.

- B. **Persistent Maintenance:** The Municipality agrees that it will promptly correct, repair or replace any aspect of the Municipality's system that is identified to it by the County as needing "persistent maintenance" as that term is defined in this Agreement.

Within the limits of its statutory authority, the County will work with the Municipality to identify and pursue sources of financial assistance to finance implementation of recommended strategies and actions to correct sources of "persistent maintenance" if it appears that the aggregate costs for such corrective action is significant and not the result of prolonged deferral of routine maintenance, but nothing contained herein is intended to relieve the Municipality of its obligation to implement corrective action.

**7. RIGHT OF ACCESS, DUTY TO COOPERATE, DEFENSE AND HOLD HARMLESS**

- A. The Municipality herein certifies to the County that, as to any public sewers, pumping stations and sewage treatment plants or part thereof covered by this Agreement, the Municipality is the owner and operator and herein grants to the County the right to enter upon all lands which said public sewers, pumping stations and sewage treatment plants, or part thereof, are located for the maintenance of the public sewers, pumping stations and sewage treatment plants as provided for herein. Further, the Municipality herein agrees to save harmless the County from any and all claims by third parties whatsoever which may arise out of the County entering onto lands where such public sewers, pumping stations and sewage treatment plants, or part thereof, are located for the purpose of maintenance thereon.
- B. By entering into this Agreement, the Municipality certifies that it shall fully cooperate with the County in all aspects of wastewater collection and treatment, including implementing and complying with all aspects of the SPDES permit issued by the NYSDEC to the County setting forth obligations for elimination or minimization of combined and/or sanitary sewer overflows, reduction of I&I, capacity management, operations and maintenance requirements and reporting requirements within the Municipally-owned system covered by this Agreement. Nothing contained in this Agreement is intended to, nor shall it be construed or represented to be an agreement by the County to implement or secure compliance with the Municipality's obligations to repair, replace, construct, reconstruct or otherwise upgrade its system. The Municipality further agrees to assist the County in implementing the provisions of Local Law No. 1 of 2011 and all applicable Onondaga County Rules and Regulations Relating to the Use of the Public Sewer System, including without limitation, prohibited discharges and uses set forth at Article III of the Rules and Regulations

Related to the Use of the Public Sewer System, and all future modifications or amendments thereto.

- C. To the extent not otherwise encompassed by paragraphs A and B of this provision, the Municipality further covenants and agrees to indemnify, defend and hold harmless the County, its officers, agents and employees from and against any and all loss or expense that may arise by reason of liability for damage, injury or death, or for invasion of personal or property rights, of every name and nature, and whether casual or continuing trespass or nuisance and any other claim for damages arising out of ownership or existence of public sewers, pumping stations and sewage treatment plants.
- D. The County covenants and agrees to indemnify, defend and hold harmless the Municipality, its officers, agents and employees from and against any and all loss or expense that may arise by reason of liability for damage, injury or death, or for invasion of personal or property rights, of every name and nature, and whether casual or continuing trespass or nuisance and any other claim for damages arising out of service and maintenance of the public sewers, pumping stations and sewage treatment plants owned by the Municipality, to the extent that such loss is caused solely by the negligence or gross negligence on the part of the County and its employees.
- E. The provisions of Paragraphs A through C of this Section shall survive termination or expiration of this Agreement.
- F. The Municipality agrees to obtain and maintain general liability insurance including comprehensive form, premises-operations, broad form contractual environmental liability coverage with minimum limits of not less than five million dollars (\$5,000,000) combined single limit for bodily injury and property damage. The required insurance policies shall be endorsed to include Onondaga County as an additional insured. Also, the policies will include a provision that the issuing company(ies) will notify the certificate of insurance holder, which shall be the Onondaga County Attorney located in the Department of Law, Civic Center 10th Floor, 421 Montgomery Street, Syracuse, New York 13202, by certified mail thirty (30) days prior to any change diminishing coverage, limits, cancellation or non-renewal of the insurance policies. For the duration of this Agreement, the issuing company(ies) shall notify the certificate of insurance holder upon renewal of the policies.
- G. The County agrees to obtain and maintain sufficient comprehensive general liability insurance to cover the County's responsibilities in the above-stated hold harmless clause.

## 8. CERTIFICATE OF INSURANCE

The Municipality shall furnish to the Onondaga County Attorney a certificate of

insurance which shall evidence all of the above requirements of insurance. Said certificate must contain specific language so as to adequately advise the County of the Municipality's compliance with the aforesaid requirements of insurance, including but not limited to specifically detailing the types, amount and duration of the insurance coverages and verifying that the issuing company(ies) endorsed such policies as hereinabove required so as to include Onondaga County as an additional insured and to notify the County Attorney of any change diminishing coverage, limits, cancellation or non-renewal of the insurance policies. Upon any and all renewals of the subject insurances during the duration of this Agreement, a new certificate of insurance shall immediately be sent to the certificate of insurance holder, the Onondaga County Attorney.

**9. STATUTORY COMPLIANCE**

In acceptance of this Agreement, the Municipality covenants and agrees to comply in all respects with all federal, state and county laws which pertain hereto regarding services for municipal corporations including but not limited to workers' compensation and employers' liability insurance, hours of employment, wages, human rights, and state and federal environmental laws, and their common law counterparts.

**10. CONFLICT OF INTEREST**

The Municipality hereby covenants and agrees that there is no member of the Onondaga County Legislature or other County officer or employee forbidden by law to be interested in this Agreement directly or indirectly who will benefit therefrom.

**11. LICENSES AND PERMITS**

The Municipality hereby agrees that it will obtain at its own expense all licenses or permits for the work performed under this Agreement, if any are necessary, prior to the commencement of work.

**12. CONTRACT MODIFICATIONS**

This Agreement represents the entire and integrated agreement between the County and the Municipality and supersedes all prior negotiations, representations or agreements either written or oral. This Agreement may be amended only by written instrument signed by both the County Executive and the Municipality.

**13. SEVERABILITY**

If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and every other term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.



## Exhibit B

# Onondaga County Water Environment Protection Matrix for Sanitary Sewer Offsets

The Following Criteria will be utilized for separate sanitary sewer areas within the Onondaga County Consolidated Sanitary District that will require offsets.

- 1) Service areas currently under consent order by New York State Department of Environmental Conservation.
- 2) Service areas subject to wet weather Sanitary Sewer Overflows (SSOs). This is inclusive of SSO's that are due to either pumped or gravity overflows.
- 3) Service areas that exceed four times their three year average base flow during wet weather events.

This criterion is to be utilized for all pump stations, treatment facilities and sewers regardless of ownership.

As such the following facilities (trunk sewer, pumping station and treatment plant) are affected by wet weather driven criterion that meet the matrix as set forth above and their corresponding tributary service areas will be deemed to require a minimum offset plan of a one to one (1:1) ratio for added sewer flows as outlined in section 20.

*Capacity Constraints Section B. of Local Law No. 1, 2011.*

### **Facilities Requiring Offset Plans**

- Westside Pumping Station service area
- Ley Creek Pumping Station service area
- Meadow Brook Wastewater Treatment Plant service area
- Davis Road Pumping Station service area
- Liverpool Pumping Station service area
- Electronics Park Trunk Sewer Area

**Exhibit B**  
**Table 1 Partial List of Available Offset Credits**

<b>Infiltration</b>			
<b>Problem Type</b>	<b>Contribution (gpm)</b>	<b>Reference</b>	
<b>Manholes</b>	Barrel Section Leak- Paved Areas	Heavy – 1,584 gpd Moderate – 935 gpd Minor- 390 gpd	A.S.C.E Manual of Practice No. 92
	Barrel Section Leaks - Unpaved Areas	Heavy – 6,625 gpd Moderate – 3,310 gpd Minor-1,585 gpd	A.S.C.E Manual of Practice No. 92
	Low Lying Manholes surface inflow or infiltration.	5,760 gpd	Value approved by the NYSDEC For Erie County Division of Sewerage Management
<b>Sewer Lining, Replacement or Rehabilitation</b>	To be determined on a case by case basis based on C.C.T.V. or flow monitoring.		
<b>Lateral Repair or Replacement</b>	500 gpd		
<b>* Roof Leader Disconnection</b>	(Area of roof ft.) x 0.62 = gpd credit		
<b>Other I/I Reduction Projects</b>	To be determined on a case by case basis		

\* Based on 1 year 2 hour return frequency rainfall = 1 inch of rain.

*Updated: 2/7/19*

## INTERMUNICIPAL MS4 AGREEMENT

This Agreement made as of this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the Town of Lysander at Town Hall 8220 Loop Road, Baldwinsville, New York 13027 (“Town”), and the County of Onondaga, a municipal corporation of the State of New York, by J. Ryan McMahon, II, its County Executive (“County”).

### WITNESSETH:

WHEREAS, the Town has requested that the County provide some or all of the services specified in this Agreement to assist the Town in complying with its obligations to develop and implement a Stormwater Management Program (“SWMP”) pursuant to the Municipal Separate Storm Sewer System (“MS4”) Town general permit (“MS4 Permit”).

WHEREAS, the County, acting through the Onondaga County Department of Water Environment Protection (“WEP”), has agreed to furnish these services upon execution of this Agreement by the County Executive and continuing until December 31, 2023 or until terminated without cause by either party upon ninety (90) days written notice of the party’s intention to so terminate it, or until terminated with cause by either party for a breach of this Agreement upon thirty (30) days written notice of the party’s intention to so terminate, which notice shall specify the grounds for termination.

WHEREAS, The Town and the County have determined that it is in their respective common interests and to the public benefit to enter into this Agreement and through its terms consider establishing a framework for developing a long term cooperative relationship for the management and control of stormwater and the corresponding reduction of pollutants to the extent possible from municipal stormwater systems owned and operated by the Town.

WHEREAS, the Onondaga County Legislature, by Resolution 011 of 2019, has authorized the County Executive to enter into this Agreement with the Town for the provision of certain MS4 Permit services covered by this Agreement.

NOW, THEREFORE, in consideration of the terms, covenants and conditions contained herein, the Town and County do hereby agree as follows:

1. **Limitation of Scope of Legal Obligations:**

The Town hereby warrants and expressly acknowledges that it is, and will remain, the sole owner and operator of the municipal stormwater system(s) that is the subject of this Agreement. The Town shall remain responsible for obtaining, implementing and complying with all aspects of its MS4 Permit. Nothing contained in this Agreement is intended to, or shall be construed or represented as an agreement by the County to obtain, implement or ensure compliance with the Town MS4 Permit obligations and the Town shall make no assertions or statements to the contrary.

2. **County and Town's Responsibilities under This Agreement: Hotline**

The County will at no cost:

- 1) Accept calls reporting potential illicit discharges from the public at large.
- 2) Record receipt of the call reporting potential illicit discharge in the WEP Dispatch Logbook.
- 3) Collect the following information if available:
  - Date and time of call
  - Name/title of the person making the call
  - Name of organization if relevant
  - Record caller contact information
  - Location of where potential illicit discharge was observed
  - Source or type of illicit discharge if known
  - Weather conditions at time illicit discharge was observed
- 4) Notify appropriate Town contact person(s) as soon as possible after receiving a reported illicit discharge.

The Town will:

- 1) Provide the County with appropriate 24-hour municipal contact information.
- 2) Respond to the person(s) reporting the potential illicit discharge to the hotline.
- 3) Provide the Commissioner of WEP with an annual summary report of: potential illicit discharge reports received from the County hotline; results of investigations of reported calls; and the status of any illicit discharges confirmed. Compliance may be achieved by providing WEP with a copy of the annual report required to be submitted to the New York State Department of Environmental Conservation ("DEC") by June 1 concurrently therewith.

3. **Outfall Inspections:**

The County will at no cost:

- 1) Annually inspect as a goal a minimum of 20% of the outfall locations provided to the County by the municipalities having executed this Agreement ("Participating MS4s"); the goal of which is to inspect all outfalls every five (5) years.
- 2) Annually communicate with Participating MS4s at the beginning of the outfall inspection season (late May or early June) to coordinate/communicate on geographic areas to be inspected during the course of the season.
- 3) Collect and record the following information:
  - Identification number of the outfall inspected
  - Date/time when outfall was inspected
  - Nature of any discharge at the time of inspection
  - While not the responsibility of WEP or its inspectors, if it is apparent to them that an outfall is in disrepair or some other unfavorable condition exists at the site, the County will attempt to notify the Town

- 4) Within 24 hours, notify appropriate Town contact person(s) during regular working hours in the event a suspected illicit discharge is observed.
- 5) Provide Town with an annual report (typically in March or April) including the following information:
  - Number of outfalls inspected
  - Identification numbers of the outfalls inspected
  - Dates/times when outfalls were inspected
  - Nature of the discharges observed at the times each outfall was inspected

The Town will:

- 1) Provide the County with appropriate municipal contact information in the event a suspected illicit discharge is observed.
- 2) Confirm and track down the source of the illicit discharge or request the County to provide such services in accordance with Section 4 below.

4. **Source Track Down:**

The County will:

- 1) Upon request of the Town, identify/confirm the nature of the illicit discharge.
- 2) Upon request of the Town, attempt to track down the source(s) of the illicit discharge.
- 3) Provide the Town, DEC, and the County Health Department with a summary report of findings.
- 4) Periodically bill the Town for services provided as set forth below.

The Town will:

- 1) Request assistance on an individual case basis to determine or confirm if an illicit discharge is occurring and what the potential source(s) might be.
- 2) Provide the County with sewer system design information and other assistance as necessary (e.g., arrange entry/access for dye testing).
- 3) Remain solely responsible for the elimination of illicit discharges.
- 4) Provide timely payment for services provided.

5. **Laboratory:**

The County will:

- 1) Collect and either analyze potential illicit discharge samples or send collected samples out to contract laboratories to confirm illicit discharges and to assist in source track down efforts (sample analysis will only be performed after consultation with the Town and Town consent is provided).
- 2) Provide the Town with a report of findings, including the analytical results and a brief interpretation of the results.
- 3) Bill the Town for laboratory costs at the prevailing lab fees.

The Town will:

- 1) Request assistance on an individual case basis to collect and analyze samples.

- 2) Provide the County with appropriate municipal contact information to obtain timely consent to proceed with sample analysis.
- 3) Determine what to do with the results.
- 4) Provide timely payment for laboratory costs.

6. **Compensation:**

The Town will compensate the County for services provided as follows:

- Hotline: No cost
- Outfall inspection: No cost
- Source track down: \$60.00/hour
- Laboratory Analysis: At prevailing lab cost/rate

7. **Other Agreements:**

This Agreement supersedes all prior negotiations and written or oral understandings, if any, between the parties, and may not be amended or supplemented except by an instrument in writing signed by both parties hereto.

8. **Interpretation and Enforcement:**

The paragraph captions are for convenience only and shall not affect the interpretation of this Agreement. This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

This agreement may be enforced in any Court of competent jurisdiction situated in the County of Onondaga, New York.

In addition to all other provisions herein, the Commissioner of WEP may exercise such other rights or remedies available to him/her pursuant to all applicable laws including without limitations the Rules and Regulations Relating to the Use of the Public Sewers.

9. **Assignment:**

This Agreement may not be assigned except upon written approval of the respective parties.

10. **Notices:**

Notices will be deemed properly given when in writing sent by certified mail postage prepaid and addressed:

Town: Supervisor of the Town of Lysander  
Town Hall  
8220 Loop Road  
Baldwinsville, New York 13027

County: Commissioner, Onondaga County  
Department of Water Environment Protection,  
650 Hiawatha Blvd., West  
Syracuse, New York 13204-1194

11. **Length of Agreement:**

This Agreement shall commence upon execution by the County Executive and continue until December 31, 2023, or until terminated without cause by either party upon 90 days written notice of the party's intention to so terminate it, or with cause upon 30 days written notice of the party's intention to so terminate, which notice shall specify the grounds for termination.

12. **Renewal:**

This Agreement may not be re-executed without a resolution by the County Legislature authorizing the County Executive to re-execute said agreement.

13. **Hold Harmless:**

A. Regarding the operations and responsibilities concerning this Agreement, the Town, to the fullest extent permitted by law, further covenants and agrees to indemnify, defend and hold harmless the County, its officers, agents and employees from and against any and all loss or expense that may arise by reason of claims, costs, damages, suits, actions, judgments, enforcement proceedings, liability for penalties and/or compliance costs, environmental liability, injury or death, or for invasion of personal or property rights, of every name and nature, and whether causal or continuing trespass or nuisance, and any other claim for damages arising at law and equity, alleged to have been caused or sustained in whole or in part by or because of any MS4 Permit violation/issue, or because of any omission of duty, negligence or wrongful act on the part of the Town, its employees or agents, or because of any joint omission of duty, negligence or wrongful act on the part of the Town and the County, their officers, agents or employees in connection with this Agreement.

B. (i) In the event that liability, penalties and/or costs are sought to be imposed upon the County by reason of an enforcement action, whether brought by or on behalf of a State or Federal regulatory agency or a third party, Town's obligation to hold the County harmless shall be binding regardless of fault on the part of the Town unless it is established in a separate and subsequent proceeding that such liability is due solely to the failure on the part of the County to furnish one or more of the services that the County has agreed to furnish pursuant to this Agreement.

(ii) Upon receipt of notification of a notice of claim, notice of hearing or actual claim by a governmental entity or third party the County, within twenty (20) business days of receiving said claim, shall provide the Town with notice and a copy thereof. Upon receipt of said notice the Town shall immediately notify the enforcing authority or claimant that,

pursuant to this Agreement, the Town is the real party in interest and shall procure a stipulation dismissing or move to have the County dismissed as a party. The Town shall assume the defense of said action and shall thereafter keep the County regularly apprised of its course and/or disposition.

14. **Insurance:**

A. Except as may otherwise be agreed to in writing between the respective risk managers for the parties hereto and approved in writing by the County Executive and the Chief Executive Officer for Town, the following insurance provisions shall be applicable to this Agreement:

(i) Town shall purchase and maintain insurance of the types and coverages set forth in Section (B), below, written on an occurrence basis, reasonably acceptable to the County and which will provide primary liability coverage to Town and with the County named as an additional insured for claims which may arise out of or result from Town's operations under this Agreement, including without limitation.

(ii) All policies shall be written so that the County will be notified of cancellation or restrictive amendment at least thirty (30) days prior to the effective date of such cancellation or amendment. Certificates or insurance from the carrier, or their authorized agent, with the appropriate additional insured endorsement attached showing the County as additional insured and stating the limits of liability, expiration date which are acceptable to the County shall be filed with and accepted by the County before operations are begun. The intent is that this insurance, with the County being named as additional insured, is to be primary over and above the County's own general liability coverage.

(iii) Each policy of insurance required under this Agreement shall be issued by an A-rated Class X (according to Best's General Ratings) insurance company authorized by the State of New York to issue such policy in this State, shall be in form and content satisfactory to the County and shall provide that the coverages afforded under the policies will not expire and/or non-renew, be reduced or restricted in coverage, or canceled for any reason until at least thirty (30) days' prior written notice has been given by certified mail to the respective counsels for the County by the issuing insurance company. In the event the Town's insurance coverages expire or are changed or canceled during the course of this Agreement, the County may elect to suspend performance until such time as the Town has demonstrated compliance with these insurance requirements and reinstatement of the required coverages. In addition to any other provision, Town shall make no claim for Force Majeure or damages if performance is suspended or this Agreement is terminated pursuant to this provision.

(iv) Should the Town fail to demonstrate compliance with these insurance requirements within thirty (30) days after the effective date of any expiration, non-complying change or cancellation, the County may elect to terminate this

Agreement in accordance with the termination and default provisions of this Agreement.

(v) All liability insurance required by this Agreement shall be maintained in force during the term of this Agreement, except as otherwise agreed to by the County upon a showing of good cause by the Town.

(vi) Failure of the Town to procure or maintain any of the insurance coverages required herein shall not relieve the Town from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations or indemnification responsibilities of the Town, as may be stated elsewhere in this Agreement.

B. The kinds of insurance required to be procured and maintained by the Town (in addition to any coverage required by other sections of this Agreement), shall be as follows:

(i) Comprehensive general liability insurance containing the following kinds of coverage and naming the Town as the insured and the County as additional insured:

(a) Premises operations insurance providing coverage for legal liability and expenses for bodily injury and property damage arising out of or resulting from the operations in connection with this Agreement.

(ii) Comprehensive automobile liability insurance, naming the Town as the named insured and the County as an additional insured, providing coverage for legal liability and expenses for bodily injury and property damage arising out of the ownership, maintenance, operation, use, loading or unloading of owned, non-owned, and hired automobiles.

C. Unless otherwise specifically required, the limits of all liability insurance to be procured by the Town shall not be less than the following:

(i) For the Town's comprehensive general liability and automobile liability:

Comprehensive General Liability ("CGL"): General liability insurance including comprehensive form, premises- operations, products/completed operations, blanket broad form contractual, independent contractors, and broad form property damage coverage with minimum limits of not less than \$1 million (\$1,000,000.00) combined single limit for bodily injury and property damage.

Auto: The Town also agrees to obtain and maintain automobile liability insurance for owned, hired and non-owned vehicles with minimum limits

of not less than \$1 million (\$1,000,000.00) combined single limit for bodily injury and property damage.

Umbrella: An umbrella policy in the amount of \$10 million (\$10,000,000.00) is required. The County shall be added to the umbrella policy as additional insured (with respect to this Agreement), and a certified copy of the umbrella policy (complete with the endorsements adding the County as additional insureds and providing thirty (30) days' notice to the County of change, cancellation or non-renewal) must be submitted along with the other insurance documents required herein.

15. **Certificate of Insurance:**

The Town shall deliver to County's Department of Law, before this Agreement may be made or performed, and from time to time as is reasonable, as evidence that Town has obtained the insurance as required by this Agreement, including Workers Compensation and employers' liability insurance, both a form certificate of insurance approved for use by New York's superintendent of insurance which identifies the insurance contracts obtained by Town and copies of the declarations of each insurance contract referred to in the form certificate of insurance. At the request of County, Town shall deliver to County's Department of Law a copy of any insurance contract required by this Agreement. Upon any and all renewals of the subject insurances during the duration of this Agreement, a new certificate of insurance shall immediately be sent to the certificate of insurance holder, the Onondaga County Attorney.

16. **Licenses and Permits:**

The Town hereby agrees that it will obtain at its own expense all licenses or permits for any work performed under this Agreement, or otherwise required by this Agreement, if any are necessary, prior to the execution of this Agreement.

17. **Severability:**

If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and every other term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law, unless the term held to be invalid or unenforceable impairs the ability of the County and/or Town to provide one or more services or derive a benefit from this Agreement that represents an essential basis for having entered into this Agreement.

18. **Clauses Required by Law:**

The parties hereto understand and agree that each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to have been inserted herein, and if through mistake or inadvertence such provision is not inserted, said clause shall be deemed to have been inserted and shall have the full force and effect of law.

19. **Authority:**

Each party hereby covenants that it has the requisite legal authority to enter into this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and their respective seals to be hereunto affixed by their duly authorized officers and day and year first above written.

Town of Lysander

IN PRESENCE OF:

By: \_\_\_\_\_

\_\_\_\_\_  
*Print Name and Title*

County of Onondaga

By: \_\_\_\_\_

J. Ryan McMahon, II  
County Executive  
BMV

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

Division of Fish and Wildlife, Bureau of Fisheries, Region 7  
1285 Fisher Avenue, Cortland, NY 13045-1012  
P: (607) 753-3095 | F: (607) 753-8532  
www.dec.ny.gov

**RECEIVED**

**APR 03 2019**

**SUPERVISOR'S OFFICE  
TOWN OF LYSANDER**

March 29, 2019

Town of Lysander  
Attn: Joseph P. Saraceni, Supervisor  
8220 Loop Road  
Baldwinsville NY 13027

Dear Supervisor Saraceni,

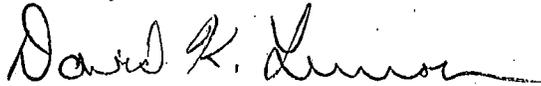
I am writing about the proposed renovations to the existing Seneca River boat launch located at 3653 Hayes Road in the Town of Lysander. The site was acquired by Honeywell, Inc. in 2018 as one of the Natural Resources Damages (NRD) restoration projects related to the Onondaga Lake Cleanup. As part of the project, Honeywell is required to transfer ownership of the parcel over to the Department and complete renovations to the existing launch and parking area in order to meet specifications for NYSDEC boat launch sites.

Honeywell and the Department had anticipated that the land ownership transfer to NYSDEC would have been completed by now but the process has taken longer than anticipated. Under DEC ownership the boat launch renovation project would be exempt from local zoning laws since the launch renovation is considered a governmental function of the Department. Given the circumstances, and the fact that Honeywell's construction schedule will likely require launch renovations to begin before the land transfer is complete, we would request that the Town consider the construction of the boat launch as an official governmental function and waive the requirement for Honeywell to seek a zoning permit from the Town so that construction can begin as scheduled. This will allow the launch to be ready for use by residents of the Town of Lysander and the general public later this boating season.

If you need copies of any documents related to the settlement between Honeywell and the State or documents regarding the construction of the boat launch, please let us know.

Additionally, please let us know whether this is an acceptable path forward.

Sincerely,



David K. Lemon  
Region 7 Fisheries Manager



Department of  
Environmental  
Conservation